

**Hearing Date: December 16, 2008**  
**Hearing Time: 10:00 a.m.**  
**Objection Deadline: December 11, 2008 at 4:00 p.m.**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

LEHMAN BROTHERS HOLDINGS, INC.,  
et al.,

Chapter 11  
Case No. 08-13555 (JMP)  
(Jointly Administered)

Debtors.

**LIMITED JOINDER OF FIFTH THIRD BANK, N.A. TO MOTION OF MAPCO  
EXPRESS, INC. FOR RELIEF FROM THE AUTOMATIC STAY**

TO THE HONORABLE JAMES M. PECK,  
UNITED STATES BANKRUPTCY JUDGE:

Fifth Third Bank, N.A. ("Fifth Third"), by and through its undersigned counsel, files this limited joinder ("Limited Joinder") to the Motion of Mapco Express, Inc. for Relief from the Automatic Stay [Doc. No. 1663] ("Motion") in seeking relief from the automatic stay to the

fullest extent necessary to (a) remove and replace LCPI<sup>1</sup> as administrative agent under the Mapco Loan and (b) replace LCPI as “swing line” lender pursuant to the terms of the Mapco Loan. Fifth Third further joins Mapco in its request for an order directing LCPI to transfer and assign its authority as administrative agent to its successors or successor by, among other things, immediately transferring books, records, liens (and other related documents and possessory collateral) and appropriate authorities to the successor agent or agents.<sup>2</sup> In support of the Limited Joinder, Fifth Third states as follows:

1. Fifth Third is a lender under the Mapco Loan.
2. LCPI is the administrative agent and one of the lenders under the Mapco Loan.
3. On October 5, 2008, LCPI filed for protection under Chapter 11 of the Bankruptcy Code (“Petition Date”), joining affiliates that had previously filed for bankruptcy protection. The cases are being jointly administered. To date, no examiner or Chapter 11 trustee has been appointed.
4. Since the Petition Date it has come to Fifth Third’s attention that LCPI may have refused and/or failed to perform its duties as agent under the Mapco Loan and may have become generally unresponsive to Mapco’s requests for its performance of such duties.
5. As a result, on November 21, 2008 Mapco filed the Motion seeking relief from the automatic stay.
6. Section 362(d) of the Bankruptcy Code provides that a party in interest may be granted relief from the automatic stay as follows:

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the same meaning given to them in the Motion.

<sup>2</sup> Fifth Third is only joining in the Motion to the extent set forth herein. Under no circumstances shall this Limited Joinder be deemed or used as Fifth Third’s agreement, concurrence or joinder in the facts, allegations or legal statements or conclusions set forth in the Motion except as so stated herein.

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditions such stay – (1) for cause ...

7. It is within the sound discretion of the Bankruptcy Court whether cause exists to vacate or modify the automatic stay. *In re Sonnax Industries, Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990).

8. *Sonnax* sets forth various factors upon which the Court may utilize in determining the existence of cause to lift the automatic stay. The relevant factors to this case are the impact of the stay on the parties and the balance of harms. *Sonnax*, 907 F.2d at 1286.

9. In this case, the balance of harms weighs in favor of granting Mapco relief from the automatic stay.

10. Any refusal and/or failure of LCPI to perform its duties or unresponsiveness is a great harm to Mapco and the remaining lenders, including Fifth Third, under the Mapco Loan as any such actions make it impossible to carry out the lending agreement. In addition, as set forth in the Motion, LCPI would not be harmed by the relief requested herein and in fact will benefit from such relief. For this reason, Fifth Third joins Mapco in seeking relief from the automatic stay.

11. Indeed, as LCPI stated itself in its Motion Pursuant to Sections 105(a), 363(b), 363(c) and 541(d) of the Bankruptcy Code and Bankruptcy Rule 6004 for Authority to (A) Continue to Utilize its Agency Bank Account, (B) Terminate Agency Relationships, and (C) Elevate Loan Participations (“Motion for Authority to Terminate”) [Doc. No. 3], “authorization to terminate its agency relations is both necessary and appropriate in order to operate the Debtor’s business in a manner that is both consistent with the provisions of the Bankruptcy Code and gives due regard to the interests of the third parties with which LCPI dealt in operating its

business.” Motion for Authority to Terminate at ¶ 24.

12. In addition, Fifth Third has agreed to and the Borrower has informed it that it has been approved by a majority of the other Mapco lenders to (i) serve as successor agent under the Mapco Loan and (ii) replace LCPI as the “swing line” lender under the Mapco Loan.

WHEREFORE, Fifth Third joins the Motion in its request for relief from the automatic stay to the fullest extent necessary: (a) to remove and replace of LCPI as administrative agent under the Mapco Loan and (b) to replace LCPI as “swing line” lender pursuant to the terms of the Mapco Loan. Fifth Third further joins Mapco’s request for an order directing LCPI to transfer and assign its authority as administrative agent to its successors or successor by, among other things, immediately transferring books, records, liens (and other related documents and possessory collateral) and appropriate authorities to the successor agent or agents.

Dated: New York, New York  
December 1, 2008

KATTEN MUCHIN ROSENMAN LLP

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